IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2105 OF 2006

Novo Nordisk A/S .. Petitioner

Vs.

Union of India & Ors. .. Respondents

WITH

WRIT PETITION NO.3093 OF 2006

Kennametal Inc. .. Petitioner

Vs.

Union of India & Ors. .. Respondents

WITH

WRIT PETITION NO.247 OF 2007

Pfizer Products Inc. .. Petitioner

Vs.

Union of India & Ors. .. Respondents

Mr.Amit Jamsandekar with Ms.Deepa Hate & Ms.Kanchan Shivkar i/b M/s.Gajaria and Co. for the petitioners

Mr.Vinod Joshi for the respondent/Union of India

CORAM : J.N.PATEL &
A.A.SAYED, JJ.

DATED : 5TH JULY, 2007

P.C.:

1. Rule. By consent, the Rule is made returnable forthwith.

2. Mr.Joshi waives service for respondent no.1 and does not wish to file any affidavit in reply.

3. Heard the learned counsel for the parties.

4. These three petitions have been assigned to this court as they involve a common issue relating to the application of the petitioners for grant of patent which is rejected by the respondent authority without giving them due opportunity in the matter.

5. This court had an occasion to deal with an identical matter in Teijin Limited Vs. Union of India in Writ Petition No.228 of 2007 decided on 26.04.07 wherein the court found that the application of the petitioner came to be rejected without giving the petitioner an opportunity of

hearing and observed that it is least expected of the authority to have followed the rule of audi alteram partem and as such the authorities having not done so which is apparent from the impugned order, this court quashed and set aside the order and directed the authorities to hear the petition before passing any order in the matter in question and also expressed that the authorities are expected to pass a reasoned order.

6. The petitioners have applied for seeking patent of their inventions from the respondent authority. The application came to be turned down by the impugned order stating that the patent application in question is deemed to have been abandoned u/s 21(1) of the Patents (Amendment) Act, 2005 for not meeting the requirements before the stipulated period and it was further observed that the claims sought to be patented are not patentable u/s 3 (m) and in respect of other items, claims came to be denied with the observation that there is nothing brought on record clearly to show that the invention has any novel features of system or apparatus. A review was sought in the matter which

came to be turned down on the ground that the order under review is passed after carefully examining the matter.

7. The learned counsel for the petitioners submits that it is expected of the authority who is discharging function under the statute to grant patent for inventions made to give an opportunity of hearing to the persons like the petitioners to satisfy to the authority how their claims for getting the inventions patented can be justified and also furnish the required material in support of their case. It is submitted that from time to time they have responded to the queries of the authority but they were never given any opportunity of hearing and the application came to be rejected and filed.

8. The learned counsel for the respondents submits that the matter has been considered by the authority concerned which is an expert body in the field and therefore, it cannot be said that the authority has not applied its mind and therefore, no interference is called for.

9. In an identical matter in Intel Corporation Vs. Union of India & Ors. in Writ Petition No.368 of 2007 decided on 26th April 2007, the Division Bench of this court has directed the authority to re-examine the case of the petitioners.

10. We concur with the view taken by the Division Bench in the matter as we also find that the application has not been processed by following proper procedure i.e. without giving an opportunity of hearing to the petitioners and their applications have been rejected which is totally in violation of the rules of natural justice and, therefore, the impugned order deserves to be quashed and set aside.

11. We therefore, quash and set aside the impugned order and remit the matter to the respondent authority to consider the claim of the petitioners afresh after giving them due opportunity of hearing which should be in consonance with the principle of natural justice and take a decision in the matter by passing a

reasoned order.

12. The respondents are directed to give due notice to the petitioners as to when they should appear before the authority for the purpose of hearing in the matter of claim for patenting the invention.

13. Rule in all the petitions is made absolute. All the petitions are disposed of. There will be no order as to costs.

(SHRI J.N. PATEL, J)

(SHRI A.A. SAYED, J)